

1 Mark E. Trafton, Esq.
2 Nevada State Bar No. 6525
3 1900 Industrial Road
Las Vegas, Nevada 89102
Telephone: (702) 385-1813
Facsimile: (702) 382-9633

5 Attorney for Defendant,
BELL TRANS

6

U.S. DISTRICT COURT

DISTRICT OF NEVADA

10 THEODORE TRAPP, on his own behalf and on behalf of all others similarly situated.

} CASE NO. 2:09-CV-00995-KJD-GWF

11 Plaintiff,

12 | vs.

13 BIG POPPA'S, LLC, a Nevada limited liability
14 company d/b/a BADDA BING MEN'S CLUB;
15 SKY TOP VENDING, INC., a Nevada corporation
16 d/b/a CAN CAN ROOM; LA FUENTE, INC., a
17 Nevada corporation d/b/a CHEETAH'S; C.P.
18 FOOD AND BEVERAGE, INC., a Nevada
19 corporation d/b/a CLUB PARADISE; DÉJÀ VU
20 SHOWGIRLS; PALOMINO CLUB, INC., a
21 Nevada corporation d/b/a PALOMINO CLUB;
22 SHAC, LLC, a Nevada corporation d/b/a
23 SAPPHIRE; K-KEL, INC., a Nevada corporation
24 d/b/a SPEARMINT RHINO; D.2801 WESTWOOD
25 INC., a Nevada corporation d/b/a TREASURES;
26 LITTLE DARLINGS OF LAS VEGAS, LLC, a
27 Nevada limited liability company d/b/a LITTLE
28 DARLINGS; O.G. ELIADES, A.D., LLC, a
Nevada limited liability company d/b/a OLYMPIC
GARDENS; LAS VEGAS ENTERTAINMENT,
LLC, a Nevada limited liability company d/b/a
LARRY FLYNT'S HUSTLER CLUB; MICHAEL
A. SALTMAN d/b/a MINXX; RICK'S LAS
VEGAS; FRIAS MANAGEMENT, LLC, a
Nevada limited liability company d/b/a ACE CAB
COMPANY and A-NORTH LAS VEGAS
CAB; WESTERN CAB COMPANY, a Nevada
corporation d/b/a WESTERN CAB COMPANY
and WESTERN LIMOUSINE; NEVADA
CHECKER CAB CORPORATION, a Nevada
corporation d/b/a NEVADA CHECKER CAB
COMPANY; NEVADA STAR CAB
CORPORATION, a Nevada corporation d/b/a
STAR CAB COMPANY; NEVADA YELLOW
CAB CORPORATION, a Nevada corporation

**DEFENDANT, BELL TRANS',
MOTION TO DISMISS AND/OR
JOINDER TO FRIAS
MANAGEMENT, LLC'S MOTION
TO DISMISS**

1 d/b/a YELLOW CAB COMPANY; LUCKY CAB
COMPANY OF NEVADA, a Nevada corporation
2 d/b/a LUCKY TRANS; SUN CAB, INC., a Nevada
corporation d/b/a NELLIS CAB COMPANY; CLS
3 NEVADA, LLC, a Nevada limited liability
company d/b/a CLS TRANSPORTATION
4 LAS VEGAS; ON DEMAND SEDAN
SERVICES, LLC, a Nevada limited liability
5 company d/b/a ODS LIMOUSINES and ODS
CHAUFFEURED TRANSPORTATION; BLS
6 LIMOUSINE SERVICE OF LAS VEGAS, INC.;
DESERT CAB, INC., a Nevada corporation d/b/a
7 DESERT CAB COMPANY and ODYSSEY
LIMOUSINE; BELL TRANS A NEVADA
8 CORPORATION, a Nevada corporation d/b/a
BELL TRANS; TONY CHONG, an individual;
9 and DOE EMPLOYEES 1-1000;

Defendants.

12 Defendant, Bell Trans', by and through its counsel, Mark E. Trafton, hereby moves this court
13 pursuant to Fed. R. Civ. P.12(b)(1) for an Order granting Bell Trans' Motion to Dismiss.

14 This motion is supported by the pleadings and papers on file herein, the memorandum of
15 points and authorities, and oral argument, if any, as allowed by this court.

16 Dated this 21 day of August, 2009.

st, 2009. 

Mark E. Trafton, Esq.
Nevada State Bar No. 6525
1900 Industrial Road
Las Vegas, Nevada 89102

Attorney for Defendant,
BELL TRANS

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTUAL STATEMENT

25 This Court is likely well aware of the factual allegations that led to the filing of this lawsuit.
26 In short, Plaintiff alleges that a taxicab driver “diverted” him from one commercial establishment,
27 and instead, took him to another because of a financial incentive. Plaintiff contends this practice is
28 pervasive throughout Las Vegas, and that Bell Trans (a limousine company) is involved.

1 Before filing his suit against Bell Trans, however, Nevada law requires that the plaintiff
2 exhaust any and all administrative remedies to the extent they are available. In this case, the Plaintiff
3 failed to do so. As such, Plaintiff's suit against Bell Trans must be dismissed.

III.

LEGAL ARGUMENT

A. Plaintiff Failed to Exhaust His Administrative Remedies

7 By racing to the courthouse to commence this litigation, Plaintiff has completely
8 ignored the detailed and thorough administrative procedures provided in NAC Chapter 706 and NRS
9 Chapter 706. By disregarding these administrative procedures, Plaintiff has failed to exhaust his
10 administrative remedies. As a result, this court lacks subject matter jurisdiction over this case, and
11 the action against Bell Trans must be dismissed.

12 With regard to complaints against limousine companies and their drivers, Nevada's
13 administrative remedies are quite thorough. It is ironic that Plaintiff alleges violations of specific
14 sections of both NAC Chapter 706 and NRS Chapter 706, yet he ignores the specific procedures
15 contained in these same chapters designed to address these violations.

16 NRS 706.1511 created the Nevada Transportation Authority, hereinafter referred to as the
17 “Authority.” NRS 706.166 states, in part, that the Authority shall:

“1. ... supervise and regulate:

(a) Every fully regulated carrier [*such as limousine companies*] .. in this State in all matters directly related to those activities of the motor carrier .. actually necessary for the transportation of persons or property .. over and along the highways."

NAC 706.3611 entitled "Prohibited acts," states, in part, that:

a driver of a limousine;

(1) Shall not divert or attempt to divert a prospective customer from any commercial establishment.

25 NAC 706.3974 entitled “Formal written complaints: General requirements” outlines the
26 general requirements for filing a complaint before the Authority. Upon receipt of a formal
27 complaint, the Authority staff must conduct an investigation. See NAC 706.3976(1). Once the
28 investigation is complete, the Authority staff reports its findings to the parties, and recommends a

1 resolution. See NAC 706.3976(2) If a resolution is not reached, then the Authority staff refers the
2 matter to the Authority Board. See NAC 706.3977. If the Authority Board, after review of all
3 relevant information from the Authority staff, determines that “probable cause exists,” than it will
4 set a hearing on the complaint. See NAC 706.3979. A hearing is then set, and NAC 606.3981
5 through NAC 706.4006 outlines the procedures for these hearings. NAC 706.4008 through 706.4018
6 describes the how fines may be assessed. In this case, the Plaintiff ignored this entire process.

7 If the Plaintiff believes either the subject matter of his complaint is not specifically covered
8 by the regulations between NAC 706.010 to 706.4019, or that the “desired relief” is not readily
9 apparent, than NAC 706.3957 allows him to file a “petition” before the Authority to seek redress.
10 Again, the Plaintiff ignored this process too. Instead, the Plaintiff seeks judicial relief.

11 Under the “well-established” exhaustion doctrine, a party must exhaust administrative
12 remedies “prior to seeking judicial relief.” *First Am. Title Co. Of Nev. v. State*, 91 Nev. 804, 806,
13 543 P.2d 1344, 1345 (1975). This doctrine is “sound judicial policy,” as it often precludes the need
14 for litigation by first requiring the parties to pursue administrative remedies to their fullest. 91 Nev.
15 at 806, 543 P.2d at 1345. Only two exceptions to this doctrine have been recognized, namely, where
16 the interpretation or constitutionality of a statute is in question, and where administrative relief
17 would be futile. *State v. Scotsman Mfg. Co., Inc.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (1993).
18 Failure by a party to exhaust its administrative remedies “deprives the district court of subject matter
19 jurisdiction.” 109 Nev. at 254, 849 P.2d at 319.

20 In this case, there is and has been a thorough and readily available administrative remedy for
21 the Plaintiff. Moreover, neither of the exceptions to the exhaustion doctrine applies here. Plaintiff’s
22 Complaint does not address the interpretation or constitutionality of any state statute. Similarly,
23 Plaintiff cannot suggest that it would have been futile to follow the administrative process. He has
24 not even attempted to bring forth his Complaint to the Authority. As a result, the Complaint must
25 be dismissed, as this Court lacks subject matter jurisdiction to hear this action.

26 ///

27 ///

28 ///

B. This court Should Decline to Hear This Action Under The Doctrine of Primary Jurisdiction.

This court should also decline to hear this case under the doctrine of primary jurisdiction. The doctrine of primary jurisdiction provides that district courts should “sometimes refrain from exercising jurisdiction so that technical issues can be first determined by an administrative agency.”

Sports Form Inc. v. LeRoy's Horse and Sports Place, 108 Nev. 37, 41, 823 P.2d 901, 903 (1992).

This doctrine (1) promotes uniformity and regulation; and (2) allows for certain matters to be reviewed by a tribunal with specialized knowledge. *Id.* Where legislation creates a thorough regulatory scheme but lacks “express language” creating a private right of action beyond that regulatory scheme, it is reversible error for a court to hear the case before it. 108 Nev. At 41, 823 P.2d at 904 (reversing the district court judgement on the merits).

In *Sports Form*, the Nevada Supreme Court applied a four part test to determine whether a private cause of action could be implied from the N.R.S. Chapter 463, which vested regulation of the gaming industry in the Gaming Control Board. *Sports Form*, 108 Nev at 39, 823 P.2d at 902 . Those factors include: “(1) whether the plaintiff was one of the class for whose special benefit the statute was enacted; (2) whether there was any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; (3) whether the implication of such a remedy was consistent with the underlying purposes of the legislative theme; and (4) whether the cause of action was “one traditionally relegated to state law, in an area basically that concerned the state, so that it would be inappropriate to infer a cause of action based solely on federal law.” *Id.* Where a court looks to state statute (as opposed to federal statute) to determine if a private right of action exists, the fourth element is inapplicable to the court’s analysis. *Id. at 40.*

In this case, there is a thorough regulatory scheme designed to address the activities alleged by Plaintiff. Also, there is no express language in NRS Chapter 706 or NAC Chapter 706 that creates a right of action for Plaintiff. In fact, Nevada law contemplates just the opposite, as it has provided a detailed and comprehensive procedure for violations of any provision contained within NAC 706.010 to 706.4019.

11

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24 day of August, 2009, I electronically transmitted the
"DEFENDANT, BELL TRANS', MOTION TO DISMISS AND/OR JOINDER TO FRIAS
MANAGEMENT, LLC'S MOTION TO DISMISS" to the Clerk's Office using the CM/ECF
System for filing and transmittal of a Notice of Electronic Filing to the counsel listed below, who
have registered to receive Electronic Filing:

Jay Edelson, Esq.
Rafey Balabania, Esq.,
Kamber Edelson, LLC
350 North LaSalle Street, Suite 1300
Chicago, IL 60654
Attorneys for Plaintiff

James E. Smyth, II, Esq.
Kummer Kaempfer Bonner
Renshaw & Ferrario
3800 Howard Hughes Pkwy., 7th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiff

D. Neal Tomlinson, Esq.
Wayne, Gross, Esq.
Michael D. Stein, Esq.
Brain R. Reve, Esq.
Snell & Wilmer, L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Attorneys for Defendant
Frias Management, LLC

William S. Kemp, Esq.
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Defendant
Frias Management, LLC

Neil J. Beller, Esq.
Neil J. Beller, Ltd.
7408 West Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for Deja Vu Showgirls
of Las Vegas, LLC

Mark E. Ferrario, Esq.
Kummer Kaempfer Bonner Rensha & Ferrario
3800 Howard Hughes Pkwy., 7th Floor
Las Vegas, Nevada 89169
Attorneys for Defendant, SHAC, LLC

Brandon E. Roos, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway,
Suite 400 North
Las Vegas, Nevada 89169
Attorneys for Defendant, SHAC, LLC

C.A. (Cathy) Olendorff, Esq.
5225 West Post Road
Las Vegas, Nevada 89118
Attorney for Defendant
CHECKER STAR CAB CORP

1 John T. Moran, Jr., Esq.
2 Moran Law Firm, LLC
3 630 South Fourth Street
4 Las Vegas, Nevada 89101
5 Attorneys for Defendants,
6 WESTERN CAB COMPANY;
7 LUCKY CAB COMPANY OF NV;
8 DESERT CAB; ON DEMAND SEDAN SERVICES

9 Norman H. Kirshman, Esq.
10 Norman H. Kirshman, P.C.
11 3800 Howard Hughes Parkway, Suite 500
12 Las Vegas, Nevada 89169
13 Attorney for Defendant CLS Nevada, LLC

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14 Karen Walker
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Karen Walker